

REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-24 are pending in the application. Several claims have been amended to better define the claimed invention. New claim 24 readable on the elected species/invention has been added to provide Applicants with the scope of protection to which they are believed entitled. The amended/new claims find solid support in the original specification and drawings, especially FIGs. 1, 4b and the corresponding text. No new matter has been introduced through the foregoing amendments.

The Examiner's maintained rejections of all claims are noted.

1. The rejections are respectfully traversed for the reasons detailed in the previous Amendment, which are incorporated by reference herein.

2. The Examiner's response to Applicants' arguments are also noted. Applicants respectfully disagree with at least the Examiner's allegation that the network controller inherently communicates with the mobile switching center.

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis added)

Since the Examiner's allegation in paragraph 4 of the Final Office Action amounts to no basis in fact and/or technical reasoning, Applicants respectfully submit that the inherency argument is flawed and should be withdrawn, or at least rephrased should the Examiner insists that the art inherently discloses the claim feature.

3. Further, Applicants respectfully submit that that the applied art of record does not teach or suggest the claimed messages between the 1xEV-DO access network controller and the 1X mobile switching center. Such cross-standard communication is neither disclosed, taught nor

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suggested in the art. It is the ordinary skill and knowledge in the art that although a terminal/system, such as the WCD of *Turner*, might be hybrid, its 1X part and 1xEV-DO part are still separately operable. *See* also the Background art section in the instant application, at page 2, line 35. Therefore, in the absence of *evidence* to the contrary, a person of ordinary skill in the art would conclude that the *Turner* WCD/system, like the conventional hybrid one, must have separately operable 1xEV-DO and 1X parts which are not configured to communicate with one another. Accordingly, the person of ordinary skill in the art would understand that the art in general and *Turner* in particular do not teach or suggest the claimed feature where the 1xEV-DO and 1X parts are communicated with each other.

For any of the reasons detailed at 1-3, the art rejections are erroneous and should be withdrawn.

Notwithstanding the above, and solely for the purpose of expediting prosecution, Applicants have amended the claims to further define over the art.

4. Specifically, independent claim 1 now recites “a 1xEV-DO access network controller for... detecting a call drop...” The *Turner* element that detects call drops is the terminal, i.e., WCD. *See, e.g., Turner* at 726 in FIG. 7 and paragraph 0103 lines 3-4.

5. The independent claims further recite that the 1xEV-DO access network controller and the 1X mobile switching center communicate with one another when a call drop is detected. It is unclear from the language of the Office Action as to *when* the allegedly inherent communication between the network controller and the switching center occurs. Based on FIG. 7 of *Turner*, no such communication occurs when a call drop is detected. *See Turner* at 730 in FIG. 7 and paragraph 0125 onwards.

6. The independent claims finally recite that information about the 1xEV-DO system’s recognition that the terminal has been switched to the 1X mode is recorded. An advantage of such arrangement has also been disclosed in the specification and recited in the claims, i.e., the user can now know the reason for call dropping. *See, e.g.,* the original specification at the paragraph bridging pages 21-22, and page 22, lines 11-23. No such feature and/or advantage can be found in *Turner*.

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For any of the *additional* reasons detailed at 4-6, the art rejections are believed overcome.

The dependent claims, including any new claim(s), are considered patentable at least for the reason(s) advanced with respect to the respective independent claim(s).

Accordingly, all claims in the present application are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under *37 C.F.R. 1.136* is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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